

EXHIBIT 3

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

REBEL ATHLETIC INC.,

Non-Party.

Declaration of Hal J. Singer, Ph.D.

ASSIGNMENT AND SUMMARY OF CONCLUSIONS

1. Plaintiffs here are what I understand to be All Star Gyms and parents of All Star Cheer athletes (“Plaintiffs”). Defendants are Varsity Brands, LLC (“Varsity Brands”), Varsity Spirit, LLC (“Varsity Spirit”), Varsity Spirit Fashion & Supplies, LCC (“Varsity Fashion”) (collectively “Varsity”), and U.S. All Star Federation, Inc. (“USASF”).¹ Plaintiffs attended Varsity’s All Star Competitions and purchased All Star Apparel (terms defined below), paying Varsity directly. Plaintiffs seek to represent a class (the “Class”) of similarly situated Gyms and parents who paid Varsity directly for All Star Competitions and All Star Apparel from May 26, 2016 to the present (the “Class Period”).² Counsel for Plaintiffs have subpoenaed a third-party to this lawsuit, Rebel Athletic Inc. (“Rebel”), to produce relevant documents relating to Rebel’s interactions with Defendants, as well as transactional sales data of All Star Apparel from January 2013 to the present.³

2. Counsel for Plaintiffs have asked me (an economist) to explain the importance of transactional data from Rebel, which appears to be Varsity’s principal competitor in the All Star Apparel market. Transactional data is the lifeblood of a typical antitrust class action.⁴ It generally reflects (1) all sales transactions between a given party and consumers in the relevant markets at issue, including all prices net of discounts, price adjustments, and returns; and (2) the incremental cost to the seller for those sales (e.g., selling costs, labor costs, cost of materials, etc.). These data allow an economist to test for the potential presence of anticompetitive effects in a market.

1. Complaint at 1.

2. *Id.* ¶31.

3. Subpoena to Produce Documents, Information or Objects or to Permit Inspection of Premises in a Civil Action, served on Rebel by Plaintiffs on November 12, 2020.

4. *See, e.g.*, ABA SECTION OF ANTITRUST LAW, PROVING ANTITRUST DAMAGES 71 (3rd ed. 2017) (“An important source of data for analyzing antitrust damages claims are the administrative records kept by firms. These can include detailed transaction-level data that can amount to millions of individual records. These records typically record information on individual transactions by customer and by specific product. Frequently, there can be hundreds or thousands of customers and hundreds or thousands of specific products, all with differing characteristics”).

3. My understanding is that Varsity has agreed to produce its own transactional data regarding All Star Apparel from January 2011 through December 2020. Plaintiffs have requested that Rebel produce similar data covering a similar time period. This third-party transactional data will be used for an analysis comparing Varsity's All Star Apparel cost and prices to Rebel's All Star Apparel cost and prices. Data regarding Rebel's sales, costs, and pricing is relevant to analyzing if Varsity's alleged anticompetitive conduct affected Rebel's prices or its costs. The acquisition and use of transactional data from third parties is typical in antitrust cases. Transactional data carries a low burden of production, given that Plaintiffs request a direct extraction of data stored in Rebel's systems in the ordinary course of business.

4. This declaration is organized as follows: In Part I, I describe the Plaintiffs, the proposed Class, and the relevant markets. In Part II, I explain the nature of the challenged conduct. In Part III, I explain the economic rationale for Rebel's transactional data.

QUALIFICATIONS

5. I am a managing director at Econ One, a senior fellow at the George Washington Institute of Public Policy, and an adjunct professor at the McDonough School of Business at Georgetown University, where I teach advanced pricing to MBA candidates.

6. I am an applied microeconomist with an emphasis on industrial organization and regulation. In an academic capacity, I have published several books and book chapters, spanning a range of industries and topics, and my articles have appeared in dozens of legal and economic journals. My competition-related articles have appeared in multiple American Bar Association (ABA) Antitrust Section journals, and I have been a panelist at several ABA Antitrust events. In a consulting capacity, I have been nominated for antitrust practitioner of the year among economists by the American Antitrust Institute (AAI) for my work in *Tennis Channel v. Comcast*, and AAI named me as co-Honoree in the same category in 2018 for my work *In Re Lidoderm Antitrust Litigation*.

7. I have testified as an economic expert in state and federal courts, as well as before regulatory agencies. I also have testified before Congress on the interplay between antitrust and sector-specific regulation. With respect to exclusive dealing cases, I have served as an expert for a class of mixed martial arts fighters in *Cung Le et al. v. Zuffa*,⁵ in which the court also relied on my proof of impact in indicating that it would grant class certification; courts have relied on my work in certifying seven classes in antitrust matters.⁶

5. *Cung Le, et al. v. Zuffa, LLC, d/b/a Ultimate Fighting Championship and UFC*, Case No. 2:15-cv-01045, U.S. District Court, District of Nevada.

6. See Kevin Draper, *Fighters Win Key Ruling in Case That Could Upend U.F.C.'s Business*, NEW YORK TIMES, December 10, 2020 ("A federal judge said on Thursday that he would make an important procedural ruling in favor of a group of mixed martial artists who are suing the Ultimate Fighting Championship, accusing it of abusing monopoly power to suppress fighter pay. The lawsuit, which will be granted class action status, could eventually cost the U.F.C. billions of dollars, fundamentally alter the world of mixed martial arts and establish new antitrust case law."). As of the time of this declaration, the court has not issued the written opinion. See also *Meijer, Inc. v. Abbott Laboratories*, No. C 07-5985 CW, 2008 WL 4065839 (N.D. Cal. Aug. 27, 2008) (Order Granting Plaintiffs' Motion for Class Certification); *Natchitoches Parish Hosp. Serv. Dist. v. Tyco Intl., Ltd.*, 262 F.R.D. 58 (D. Mass. 2008).

I. PLAINTIFFS, CLASS, RELEVANT MARKETS AND REBEL ATHLETIC INC.

8. The Plaintiffs in this case are three All Star Gyms (“Gyms”) and three parents of current and former All Star Cheerleaders.⁷

9. The relevant markets asserted in the Complaint are All Star Competitions (“Competitions”) and All Star Apparel (“Apparel”). All Star Competitions are events at which teams of All Star Cheerleaders compete against one another in the choreographed performance of routines comprised of combinations of stunts, pyramids, dismounts, tosses, and/or tumbling.⁸ All Star Apparel includes uniforms, clothing, shoes, accessories, and equipment purchased for use by All Star Cheerleaders at Competitions and during practices and training.⁹ This market involves at least \$300 million in sales, annually.¹⁰

10. I understand that Rebel has competed against Varsity in the Apparel market since at least 2013.¹¹ Rebel, like Varsity, sells uniforms, clothing, shoes, accessories, and equipment purchased for use by All Star Cheerleaders at Competitions and during practices and training.

11. The Plaintiffs seek to represent a proposed Class of entities and natural persons that directly paid Varsity for: (a) registration, entrance, spectator, or other fees and expenses associated with participation in or attendance at one or more All Star Competitions or (b) All Star Apparel.¹² As indicated above, the Class Period is defined as May 26, 2016 through the present.¹³

II. THE NATURE OF THE CHALLENGED CONDUCT

12. The Complaint challenges several aspects of Varsity’s conduct as being part of an anticompetitive scheme harming competition in the two related but distinct markets described above, Competitions and Apparel.

13. Varsity’s challenged conduct includes: (1) acquiring, on more than two occasions, its largest rival and many of its smaller rivals and potential rivals;¹⁴ (2) causing certain Gyms to agree to exclusivity or near exclusivity to avoid penalty pricing in Competition fees and, as part of these exclusionary arrangements, requiring Gyms in its allegedly market-dominant events to buy its Apparel exclusively or nearly exclusively from Varsity (in arrangements that Varsity has called

(granting motion to certify class); *In re Delta/AirTran Baggage Fee Antitrust Litig.*, 317 F.R.D. 665 (N.D. Ga. 2016) (same); *Johnson v. Arizona Hosp. and Healthcare Assoc.* No. CV 07-1292-PHX-SRB, 2009 WL 5031334 (D. Ariz. July 14, 2009) (granting in part motion for class certification); *Southeast Missouri Hospital and St. Francis Medical Center v. C.R. Bard*, No. 1:07cv0031 TCM, 2008 WL 4372741 (E.D. Mo. Sept. 22, 2008) (granting in part motion for class certification); and *In re Lidoderm Antitrust Litig.*, No. 12-md-02521, 2017 WL 679367 (N.D. Cal. Feb. 21, 2017) (Order Granting Motions for Class Certifications and Denying Daubert Motions).

7. Complaint ¶¶29-39.

8. *Id.* ¶¶6-7, 81-88, 111-15.

9. *Id.* ¶¶6, 102-06, 140-42.

10. *See, e.g.*, Leigh Buchanan, “The Battle for Cheerleading-Uniform Industry is Surprisingly Cutthroat and Appropriately Glittery,” *Slate* (Feb. 22, 2016), <https://slate.com/business/2016/02/rebel-wants-to-disrupt-the-surprisingly-entrenched-cheerleader-uniform-industry.html>.

11. *Id.*

12. Complaint ¶40.

13. *Id.*

14. *Id.* ¶¶156-69.

the Family Plan and the Network Agreement);¹⁵ and (3) using its alleged market power and control of cheerleading's governing bodies, such as USASF, to create insurmountable obstacles to other potential rivals, forcing some of them out of business and permanently relegating the rest to "B-league status."¹⁶

III. ECONOMIC RATIONALE FOR REBEL'S TRANSACTIONAL DATA

14. Transactional data is the lifeblood of economic analyses presented in all or almost all antitrust cases. My understanding is that Varsity has agreed to produce their own transactional data from 2011 through the present. Varsity's transactional data allows me to determine the prices, quantities sold, revenues, and costs for each of its 160+ Apparel products over time—both during the period of the challenged conduct and in the relatively clean period before the challenged conduct when Varsity had less market power and market share. This kind of data is critical for antitrust analysis, such as evaluating the impact of Defendants' conduct on prices over time and to quantify the aggregate damages to the proposed Class of Gyms and parents.

15. To aid in these analyses, Plaintiffs have requested that Rebel, who appears to be a Varsity's principal competitor in the Apparel market, produce the following categories of data: (1) transactional sales data for Apparel; (2) Apparel cost data; and (3) data relating to prices, fees, rebates, discounts, terms of sale, or any other financial arrangement regarding Apparel. This transactional data is analogous to what Varsity has agreed to produce.

16. An analysis of a variable (such as price or cost) over time, or "time-series analysis," is a standard econometric tool designed to analyze how changes in one variable (the "treatment variable") over the course of a specific time period are associated with changes in some outcome variable (the "dependent variable"). In other words, analyses over time tell us how two variables move in conjunction with one another, accounting for other relevant variables as appropriate.

17. In the instant case, Rebel's transactional data may be used, *inter alia*, to determine whether Varsity was able to successfully leverage its market power in the Apparel market to either (1) inflate the price of its own All Star Apparel prices above competitive levels, or (2) raise the costs of its rivals by, for example, denying Rebel economies of scale.¹⁷ *First*, Varsity's allegedly inflated All Star Apparel prices can be compared to Rebel's All Star Apparel prices, given that Rebel appears not to have engaged in similarly anticompetitive conduct. If I determine that Rebel's prices were not affected by the alleged anticompetitive conduct, comparing Rebel's and Varsity's prices over time would allow Plaintiffs to assess whether changes in Varsity's Apparel prices were due to industry-wide changes (say, from increased raw material or shipping costs) or due to Varsity's alleged anticompetitive conduct. This sort of comparison is analogous to controlling for inflation or unemployment when studying changes in wages. *Second*, Rebel's cost data can also be used to determine whether Varsity's alleged anticompetitive conduct raised Rebel's costs by,

15. *Id.* ¶¶170-85.

16. *Id.* at ¶¶195-222, 226.

17. *See, e.g.,* Einer Elhauge, *Defining Better Monopolization Standards*, 52(2) STANFORD LAW REVIEW 253-344 (2003), at 321 ("In most industries, there are economies of scale at low output levels, so that firms can lower their costs by expanding until they reach the output level that minimizes their costs, which is called the minimum efficient scale. If foreclosure prevents a competitive number of rivals from maintaining this scale, or from expanding their operations to reach it, then it impairs their efficiency.").

among other reasons, impairing their ability to reach efficient scale. It may be the case that the challenged conduct increased Varsity's long-term profitability by denying Rebel the ability to reach efficient cost scale.¹⁸

18. In my experience, it is common practice for Plaintiffs in large antitrust cases such as this one to subpoena and receive detailed transactional data from third parties to better inform their expert's economic analyses. I have successfully applied this style of analysis in several class certification cases, including, most recently, in *Cung Le, et al. v. Zuffa, LLC*, where I had access to a competing third-party firm's detailed wage data in addition to the defendant's wage data. This data allowed me to compare the defendant firm's anticompetitively suppressed wages to the uncontaminated wages of its competitor (after in fact determining that the rivals' wages were not otherwise affected by the alleged monopolist's misconduct).

19. Plaintiffs' counsel has requested Rebel's full transactional data as it is stored in Rebel's ordinary course of business. Retrieval of this data would constitute a direct extraction from Rebel's data repository, which in my experience involves a relatively low burden to produce. Indeed, extraction frequently involves nothing more than the push of a button. In this case, it would *not* be appropriate to receive aggregated or average data over the relevant periods. Because Varsity sells over 160 different Apparel products, any sort of aggregated figures from Rebel would impede Plaintiffs' efforts to accurately compare prices for like goods over time. Having Rebel's actual transactional dataset allows for an apples-to-apples comparison.

CONCLUSION

20. Plaintiffs' economists' ability to develop an econometric model demonstrating Varsity's impact in the Apparel market depends in part on the availability of high quality, third-party data. Due to the significant variation of All Star Apparel items sold, Plaintiffs require Rebel's actual transactional data to perform an accurate analysis comparing Rebel's prices for All Star Apparel to Varsity's.

* * *

Hal J. Singer, Ph.D.:



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18. *Id.* at 286 (“[T]he firm seeking to create or maintain a monopoly by offering such a future discount need not sacrifice any short-term profits at all. Indeed, even when a firm couples its exclusionary policy with a fixed price, that price may not entail any sacrifice of short-term profits. This is because buyers will accept that fixed price as long as it reflects a discount from the expected future supracompetitive price.”).

EXHIBIT 1: CURRICULUM VITAE OF HAL J. SINGER



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Education

Ph.D., The John Hopkins University, 1999; M.A. 1996, Economics

B.S., Tulane University, *magna cum laude*, 1994, Economics. Dean's Honor Scholar (full academic scholarship). Senior Scholar Prize in Economics.

Current Positions

ECON ONE, Washington, D.C.: Managing Director 2018-present.

GEORGETOWN UNIVERSITY, MCDONOUGH SCHOOL OF BUSINESS, Washington, D.C.: Adjunct Professor 2010, 2014, 2016, 2018, 2019, 2020, 2021.

GEORGE WASHINGTON UNIVERSITY, SCHOOL OF PUBLIC POLICY, GEORGE WASHINGTON INSTITUTE FOR PUBLIC POLICY, Washington, D.C.: Senior Fellow 2016-present.

Employment History

ECONOMISTS INCORPORATED, Washington, D.C.: Principal 2014-2018.

NAVIGANT ECONOMICS, Washington, D.C.: Managing Director, 2010-2013.

EMPIRIS, L.L.C., Washington, D.C.: Managing Partner and President, 2008-2010.

CRITERION ECONOMICS, L.L.C., Washington, D.C.: President, 2004-2008. Senior Vice President, 1999-2004.

LECG, INC., Washington, D.C.: Senior Economist, 1998-1999.

U.S. SECURITIES AND EXCHANGE COMMISSION, OFFICE OF ECONOMIC ANALYSIS, Washington, D.C.: Staff Economist, 1997-1998.

THE JOHNS HOPKINS UNIVERSITY, ECONOMICS DEPARTMENT, Baltimore: Teaching Assistant, 1996-1998.

Honors

Honoree, Outstanding Antitrust Litigation Achievement in Economics, American Antitrust Institute, *In re Lidoderm Antitrust Litigation*, Oct. 9, 2018.

Finalist, Outstanding Antitrust Litigation Achievement in Economics, American Antitrust Institute, *Tennis Channel v. Comcast*, Dec. 4, 2013.

Authored Books and Book Chapters

Do Municipal Broadband Networks Stimulate or Crowd Out Private Investment? An Empirical Analysis of Employment Effects, in THE IMPACT OF THE INTERNET ON JOBS (Lorenzo Pupillo, ed. Palgrave 2017).

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Expert Testimony Since 2012

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Paul Weidman et. al v. Ford Motor Company, Case No. 18-cv-12719 (E.D. Mich.)

Leinani Deslandes et al v. McDonald's USA, LLC, Case No. 17-cv-04857 (N.D. IL)

In Re: Macbook Keyboard Litigation, Case No.: 5:18-cv-02813-EJD (N.D. Ca)

Estate of Beverly Berland v. Lavastone Capital LLC, Case No. 1:18-cv-02002-CFC (D. Del.)

Donald Conrad et al. v. Jimmy John's Franchise LLC, et al., No. 3:18-cv-00133-NJR (S.D. Ill.)

Zyodus Pharmaceuticals Inc. and Cadila Healthcare Limited v. Takeda Pharmaceutical Company Limited et al., No. 18-01994 (FLW)(TJB) (D. N.J.).

In Re GSE Bonds Antitrust Litigation, No. 1:19-cv-01704-JSR (S.D. N.Y.).

beIN Sports, LLC v. Comcast Cable Communications, LLC, File No. CSR-8972-P (FCC).

Chelsea Jensen, et al. v. Samsung Electronics et al., Court File No. T-809-18

(Federal Court in Canada).

Estate of Phyllis Malkin v. Wells Fargo Bank, N.A., No. 17-cv-23136 (S.D. Fl.).

In Re Capacitors Antitrust Litigation, Master File No. 3:14-cv-03264-JD (N.D. Cal.)

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